

CONFIDENTIAL

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ORIGINAL

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CITY OF HOMESTEAD

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ATTORNEY/CLIENT SESSION

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13 IN RE: JAMES ERIC McDONOUGH V. CITY OF HOMESTEAD, et al

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CITY HALL

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100 CIVIC COURT

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HOMESTEAD, FLORIDA 33030

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THURSDAY, MARCH 2, 2017

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5:41 p.m. - 5:55 p.m.

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24 Taken before Mary G. Stephenson, Notary Public

25

for the State of Florida.

Veritext Legal Solutions

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305-376-8800

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1 APPEARANCES:

2 COUNCIL MEMBERS:

3 JEFF PORTER, MAYOR

4 PATRICIA FAIRCLOUGH, VICE MAYOR

5 JON BURGESS

6 ELVIS R. MALDONADO

7 LARRY ROTH

8 STEPHEN R. SHELLEY

9 JIMMIE L. WILLIAMS, III

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CITY ATTORNEY:

WEISS SEROTA HELFMAN

COLE & BIERMAN, P.L.

BY: RICHARD JAY WEISS, ESQ.

ERIC STETTIN, ESQ.

MATT PEARL, ESQ.

MATT MANDEL, ESQ.

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1        Thereupon, the following proceedings were had:

2                    MAYOR PORTER: I'm calling this public  
3                    meeting to order.

4                    The time is now 5:41.

5                    We are about to have an attorney/client  
6                    session in accordance to Florida Statute 286.011  
7                    regarding the litigation styled James Eric  
8                    McDonough versus City of Homestead, Case Number  
9                    1:16-cv-24524, pending in the United States  
10                   District Court, Southern District of Florida.

11                   The session is estimated to last one hour.

12                   The following people will be in attendance:

13                   Myself, Vice Mayor Fairclough, Mr. Williams,  
14                   Mr. Shelley, Mr. Burgess, Mr. Maldonado, Mr. Roth,  
15                   City Attorneys Eric Stettin, Matt Pearl, Matt  
16                   Mandel and Richard Weiss.

17                   These proceedings will be recorded by a  
18                   certified court reporter and, at the conclusion of  
19                   all litigation discussed, the transcript will be  
20                   made part of the public record.

21                   All those I have not mentioned should leave  
22                   the room at this time.

23                   Matt.

24                   MR. MANDEL: Good evening and good to see a  
25                   lot of you.

1                   For those that I haven't met, I am Matt  
2                   Mandel. I'm head of the litigation group in the  
3                   Weiss Serota firm, and it's my pleasure to be  
4                   before the council again. So, hello.

5                   We are here to talk about this brand new  
6                   lawsuit, 92 page lawsuit that was brought by  
7                   Mr. McDonough that alleges a whole slew of claims  
8                   against the city, a couple of things against the  
9                   mayor, a couple of things against the city  
10                  manager, a lot of claims against the chief of  
11                  police, 17 claims against Mr. Aquino, from IA, and  
12                  the lion share of the claims are against Police  
13                  Officer Murguido.

14                  Basically, we are still going through this  
15                  extremely voluminous complaint in terms of the  
16                  facts and tortured history of this matter, but it  
17                  essentially initially stems from a disagreement  
18                  between Mr. McDonough and Mr. Murguido as kind of  
19                  just spiraling out of control and has kind of  
20                  taken a life on its own. He's now not just suing  
21                  the city and 12 police officers of the city, he is  
22                  suing Miami-Dade County, ten different employees  
23                  of Miami-Dade County. He is suing Monroe County  
24                  and various employees of Monroe County. He is  
25                  also suing an urgent care center in southern

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1 Florida as well.

2 COUNCILMAN BURGESS: Urgent care, how does  
3 that tie in?

4 MR. MANDEL: That is where he was Baker  
5 Acted.

6 There is something called -- for those --  
7 Councilman Shelley, as you know, there is what is  
8 called shotgun pleading. This is a shotgun  
9 pleading where you just plead everything and throw  
10 as much as you can against the wall and see what  
11 sticks and that is what they are doing here.

12 We have a job now to go through it and  
13 dispose of it, at least, as it relates to the city  
14 and the various different city employees.

15 Now, I think the most important thing that  
16 we need to get to tonight, the issues are this.  
17 We have individuals, individual employees are sued  
18 and also the city.

19 MR. WEISS: And the mayor.

20 MR. MANDEL: And the mayor and the city  
21 manager.

22 COUNCILMAN BURGESS: He has enough. He can  
23 defend himself.

24 COUNCILMAN WILLIAMS: I have nothing.

25 MR. MANDEL: What we need to do and what we

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1       would recommend is that our law firm represent, of  
2       course, not only the city, but the mayor and the  
3       city manager and all city employees.

4           At this point, we have looked at based on  
5       our knowledge of the facts of the case, based on  
6       our knowledge of the history, we don't see any  
7       conflict, any situation at this point where the  
8       city and any of the folks on behalf of the city  
9       have any type of conflicts.

10          So what we need to do is get the council's  
11       blessing. We don't need to get a vote. Just get  
12       a consensus on that, for our law firm to represent  
13       the city and the other individuals affiliated with  
14       the city.

15           COUNCILMAN WILLIAMS: You want us to give  
16       you permission to represent the mayor and all  
17       those people, the chief, workers?

18           MR. STETTIN: Just the city employees.

19           COUNCILMAN WILLIAMS: Well, we are city  
20       employees. I think the mayor should be  
21       represented.

22           MR. MANDEL: Correct.

23           COUNCILMAN BURGESS: Can the mayor leave so  
24       I can say whatever I want?

25           MR. WEISS: Some cities do go out and hire

1                   special counsel for all of these people, but we  
2                   think it's an awfully expensive --

3                   COUNCILMAN WILLIAMS: Mayor, do you feel  
4                   comfortable with it?

5                   MAYOR PORTER: Yes, sir. I think we have  
6                   done nothing wrong.

7                   MR. MANDEL: I will tell you, the counts  
8                   against the mayor flow from the two times that  
9                   Mr. McDonough tried to speak at a council meeting  
10                  January of 2015 and February 2015, and also the  
11                  claims against Mr. Gretsas as well. So the mayor  
12                  and the city of manager have the least amount of  
13                  fire directed at them.

14                  We think the complaint as pled is very  
15                  flawed. We have a lot of defenses we think, a lot  
16                  of bases to move to dismiss here.

17                  Once we get the green light from the city  
18                  in terms of representing the city and the city  
19                  employees, the very first thing we will be doing  
20                  is piecing together a motion, a comprehensive  
21                  motion to dismiss. This is with Judge Kathy  
22                  Williams, who is a federal district court judge,  
23                  used to be the federal public defender in the  
24                  Southern District of Florida.

25                  Ironically, I had a case with her maybe

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1           about two years ago where we had a shotgun  
2           pleading. She threw it out because it was a  
3           shotgun pleading, and it was a lot less egregious  
4           than what we have here. There is some precedent  
5           with her. We will make a lot of the same  
6           arguments.

7           At this point, the most important thing is  
8           that we get authorization from the council.

9           Now, what does that entail? Letters. We  
10          have to issue letters to the city employees for  
11          them to basically waive any potential type of  
12          conflict. This will go out to all the employees  
13          for them to sign, and, similarly, the city will  
14          have to sign a letter allowing us to represent the  
15          employees. We need to do that pursuant to the  
16          Rules of Professional Conduct.

17          COUNCILMAN WILLIAMS: Question.

18          MR. MANDEL: Yes, councilman.

19          COUNCILMAN WILLIAMS: Let's say those  
20          people listed, they take a more aggressive action  
21          to sue them themselves?

22          MR. STETTIN: You mean countersue.

23          COUNCILMAN WILLIAMS: Countersue. We have  
24          nothing to do with that.

25          MR. MANDEL: Right. If they want to file a

1                   counterclaim, it would be our recommendation that  
2                   they would have to hire somebody to bring a  
3                   counterclaim on their behalf. This is just to  
4                   defend them.

5                   COUNCILMAN WILLIAMS: I think that needs to  
6                   be made clear.

7                   MR. WEISS: We would never -- in any case  
8                   where we file the counterclaim, I think there have  
9                   been some cases, we view that as a new lawsuit and  
10                  we would come to the council and we would never  
11                  file a counterclaim like that without council  
12                  authorization.

13                  MAYOR PORTER: Just for the record, he is  
14                  suing personally and professionally in our  
15                  capacity because we work for the city. So it's  
16                  more than just me being mayor. He is suing me  
17                  personally.

18                  MR. MANDEL: That is correct.

19                  MR. WEISS: And I know this goes without  
20                  saying, but we do, aside from our regular just  
21                  responsibilities, we have personal relationships  
22                  with a lot of people that have been sued; the  
23                  mayor, George, members of the police department.  
24                  We do take them very, very seriously. I know the  
25                  mayor knows how seriously we take them. We have

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1           been through a lot together. George, I know, we  
2           have spoken with him, and, you know, we will get  
3           those people out, do everything we can to get  
4           those people out and eliminate them, eliminate the  
5           whole lawsuit, but we do take it very seriously  
6           that we are representing individuals who have  
7           stuff at stake.

8           MAYOR PORTER: And we are all vulnerable.  
9           All of us individuals are all vulnerable in this  
10           position.

11           Yes, sir.

12           COUNCILMAN SHELLEY: Quick question. The  
13           manager and the mayor, no problem there.

14           On the other employees, not knowing all the  
15           facts or details, all of the allegations arise or  
16           relate to their employment with the city, arising  
17           out of their acts?

18           MR. STETTIN: According to our  
19           investigation, yes.

20           The plaintiff, Mr. McDonough or  
21           Dr. McDonough is trying to create things that may  
22           be more difficult and he alleges certain things  
23           were outside the course and scope or in bad faith.  
24           We disagree with that. Just because he alleges  
25           that, doesn't mean we have to go along with it.

1           We think everything the mayor, the manager and the  
2           officers did at this point appears to be in good  
3           faith and done, whatever they did was in the  
4           city's interest.

5           COUNCILMAN SHELLEY: As the lawsuit  
6           develops, as discovery proceeds if anything looks  
7           like there is some factual basis to anything done  
8           outside the scope of their employment, at that  
9           time, do you guys come back to us and then we have  
10           another decision to be made?

11           MR. MANDEL: Right. Councilman Shelley,  
12           part of our letters will say something along those  
13           lines, that at this point, we don't think there is  
14           a conflict, but if one arises that basically the  
15           employee will allow us to continue representing  
16           the city, allow us to withdraw from representing  
17           them without raising any conflict issue or seeking  
18           to disqualify us from representing the city or the  
19           other defendants. That is another purpose of the  
20           letter.

21           MR. WEISS: We have had this issue come up  
22           in other circumstance. I think it may have come  
23           up in one of the Deegan cases.

24           George is not here, but I'll tell you the  
25           way he feels about it, which is our employees, the

1 manager, the mayor never would have had any  
2 contact with Mr. McDonough had it not been for  
3 their job. George takes a very sort of broad view  
4 of the fact they never would have touched this  
5 guy. So really anything that has to do with --

6 COUNCILMAN SHELLEY: I know what some of  
7 his allegations have been. So mine is more about  
8 the original initiator of the emotional roller  
9 coaster that he is now alleging this. That  
10 initial incident may or may not be within the  
11 scope of the employment of the employee. That is  
12 more or less why I am there and the others apply  
13 to it as well.

14 I just want to make sure that the  
15 authorization -- you know, everyone is presumed to  
16 be acting under the employ or the guise of the  
17 city.

18 MR. WEISS: If we find something --

19 COUNCILMAN SHELLEY: That is fine.

20 MR. WEISS: -- that is outside, then we  
21 always bring it back.

22 COUNCILMAN SHELLEY: I just want to make  
23 sure that we start off protecting everybody, but  
24 if during the discovery process there looks like  
25 there is something that is questionable, I want to

1 make sure I have the ability to digest that before  
2 additional dollars are spent.

3 MR. STETTIN: What happened originally was  
4 there was a prior McDonough Murguido lawsuit,  
5 which is actually still pending right now. We  
6 actually turned that file over to Travelers, which  
7 was the carrier for that claim in 2011 or 2012.  
8 Travelers gave us coverage and said they believe  
9 he was within the course and scope and there is  
10 coverage under that policy to protect Officer  
11 Murguido. The allegations in this case are pretty  
12 much identical.

13 COUNCILMAN SHELLEY: I am not familiar with  
14 all the specific facts. I just know from bits and  
15 pieces. So you guys will sort it all out.

16 MR. WEISS: If you want more details, we  
17 will be happy to give you the details of it.

18 MAYOR PORTER: Let me ask a question as far  
19 as going forward. We know this guy is going to  
20 continue to come and hammer all of us collectively  
21 and individually as we go forward.

22 We are in a case. We are in a lawsuit.  
23 Anything that we say -- how can we deal with this  
24 going forward? Is there anything we can do to  
25 eliminate him or should we just be able to say we

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1           are -- normally, you say you are in a lawsuit,  
2           don't say anything.

3           COUNCILMAN WILLIAMS: Can I add something  
4           on that? He has requested a meeting with me.

5           MR. WEISS: I would not meet with him.

6           COUNCILMAN WILLIAMS: See that.

7           MAYOR PORTER: Those are the kind of things  
8           that I am saying.

9           COUNCILMAN WILLIAMS: That is what I am  
10          saying. How would we know?

11          MR. WEISS: I just wouldn't have any  
12          contact with him. I would tell him that -- I  
13          certainly would not have any contact with him or  
14          his lawyer. He has the right to come and speak  
15          before the council, but I don't think you should  
16          comment about anything.

17          MAYOR PORTER: That is the point. We  
18          haven't been.

19          MR. WEISS: I believe you have been very  
20          good on that.

21          MAYOR PORTER: Yes, we have all been, you  
22          know.

23          VICE MAYOR FAIRCLOUGH: It has been easy on  
24          me because it has been public comment, but if he  
25          speaks on an agenda item.

1                   MAYOR PORTER: We are going to address  
2                   that. We are going to correct that. I am going  
3                   to correct that. Okay? We will fix that. Next  
4                   meeting will be done, but, yes, we are going to  
5                   get control, but I think from a perspective of us  
6                   going forward, we are all subject to this lawsuit  
7                   that is against George and myself personally right  
8                   now.

9                   MR. WEISS: It's also against the city.

10                  COUNCILMAN WILLIAMS: It's all of us.

11                  MAYOR PORTER: Realistically.

12                  I just wanted to get out. There has to be  
13                  some way that we shouldn't have any interaction  
14                  with this guy because anything we say, anything  
15                  gets said at the meeting will be used against us.

16                  MR. MANDEL: Yes.

17                  MR. STETTIN: He will bait you. He will  
18                  bait you.

19                  MAYOR PORTER: We have about three of them.  
20                  We are going to get that under control.

21                  MR. MANDEL: So we have consensus that we  
22                  can represent the city employees.

23                  MR. WEISS: Good job.

24                  MR. STETTIN: This is an important case.  
25                  We are getting the best of our best litigators.

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1           Mr. Mandel is on the case. He is an excellent  
2           lawyer. He is working with us. We are on top of  
3           this case. This is very important for all of us.

4           MAYOR PORTER: I'll now reopen the public  
5           meeting.

6           The attorney/client session has now been  
7           terminated and members of the general public are  
8           now invited to return for any further proceedings  
9           or matters.

10           (Thereupon, the proceedings were concluded  
11           at 5:55 p.m.)

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## C E R T I F I C A T E

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I, Mary G. Stephenson, FPR, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

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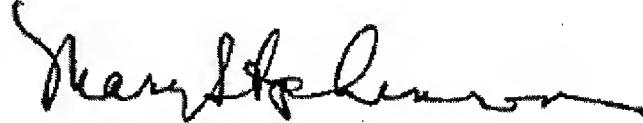
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Dated this 16th day of March, 2017.

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Mary G. Stephenson, FPR

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